IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 174 of 2003

with

SPECIAL CIVIL APPLICATION No 652 & 1249 of 2003

For Approval and Signature:

Hon'ble ACTING CHIEF JUSTICE MR.JN BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHREE GAFARBHAI ISMAILBHAI SHAIKH

Versus

STATE OF GUJARAT

Appearance:

MR MM TIRMIZI, HR PRAJAPATI, for Petitioner

MR SUDHANSHU PATEL AND MS MITA PANCHAL for Respondents

CORAM : ACTING CHIEF JUSTICE MR.JN BHATT

Date of decision: 11/06/2003

ORAL JUDGEMENT

#. In this group of three petitions challenging the detention orders passed by the respective detaining authority in exercise of powers conferred under Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as "the PASA Act"), a common question, namely non consideration of representation and resultant deprivation of right of effective and sufficient opportunity, and whether the continued detention would be just, legal and proper or not, has arisen, and as such, upon request of the learned advocates appearing for the parties, these three matters have been heard together and are being disposed of by this common judgment.

#. The learned advocates appearing for the parties are heard. The entire record is examined threadbare and relevant legal settings are also considered.

#. Liberty is a basic and dynamic jurisprudential concept and philosophy, and therefore, it has constitutional and statutory safeguards for the preservation, projection and protection of the liberty of an individual. Since it is a dynamic aspect and concept, continued research is necessary to regularly assess the changing dimension and dynamics of such a constitutional right, personal right of liberty guaranteed under the Constitution, the highest law of the land.

#. Preventive detention has long standing and deep rooted base in this country. The preventive detention is a serious in-road and encroachment on the liberty of a person. All human beings are born with free and equal rights. All human beings are, no doubt, gifted by their creator with certain unalienable, nontransferable, nonnegotiable natural rights. Justice, liberty and equality have been pursuits of human kind and are sine qua non for organized civilized society. Preservation of human life is the most important right for an individual. The personal liberty has been claimed, and, as such, has been acclaimed as a part of the right to life and for the development and protection of this concept, Courts have taken utmost care to protect various aspects of personal liberty as part of protection of life. Article 21 provides for everyone, right to life, liberty and security of person. Article 21 of the Constitution provides that no person shall be deprived of his life or personal liberty except according to procedure established by law. Article 22(5) also provides

requisite and sufficient safeguards while encroaching upon the right to personal liberty of an individual. Under various detention laws, the competent authorities are empowered to pass order of detention, provided material and important constitutional and statutory safeguards are observed, and subjective satisfaction has been reached on an objective assessment of the sufficient material. With this prefatory profile of the preventive detention law, it would be interesting and imperative to assess, evaluate and adjudicate upon the challenge against the detention order in this petition on the basis of the material emerging from the record.

#. The PASA Act is aimed and designed to provide for preventive detention of bootleggers, dangerous persons, drug offenders, immoral traffic offenders and property grabbers for preventing their anti social and dangerous activities prejudicial to the maintenance of public order. The detenus in these petitions have been detained by the competent authority under the PASA Act by passing the impugned detention orders. They have therefore assailed the detention orders on various grounds by way of instant writ petitions by invocation of provisions of Article 22(5) of the Constitution of India. The common ground, which is challenged before this Court in this group of petitions, is pertaining to non fulfillment and non observance of the constitutional right to make effective representation under Article 22(5) of the Constitution. It is provided therein that when any person is subjected to detention order in pursuance of any provisions of detention law, the authority making such detention orders, is obliged to afford an opportunity of making representation against such orders of detention at the earliest by communicating to such persons, the grounds on which the detention order has been founded upon, which is constitutional safeguard enshrined under Article 22(5) of the Constitution of India and which has long legal legendary philosophy and purpose, namely, that the liberty of an individual is not invaded upon without there being statutory provisions and without due compliance and observance of the safeguards provided in the Constitution as well as in different detention laws.

#. Article 22 of the Constitution consists of two parts. Clause (1) and (2) apply to persons arrested or detained under a law otherwise than a preventive law, whereas clauses (4) to (7) of Article 22 of the Constitution are applicable in case of arrest or detention under the preventive detention law. The underlying design and desideratum of the provisions of clause 5 of Article 22

of the Constitution of India is succinctly expounded, explored, accepted and very much widened by host of judicial pronouncements. It is, therefore, imperative fro any authority under the detention law to see that material safeguards, constitutional as well as statutory, are observed in its due spirit and letter, since invasion of liberty is by virtue of the order under the detention laws.

#. It is, therefore, incumbent to consider as to whether the constitutional safeguards enshrined under Article 22(5) of the Constitution are duly observed or not, and this sole important question is required to be considered and adjudicated upon in this group of three petitions. Having taken into consideration as to whether the right to make effective representation as enshrined under Article 22(5) of the Constitution is really duly observed by the detaining authority or the State of Gujarat so as to make the continued detention legal, valid and justifiable, and further, having taken into consideration the facts and circumstances emerging from the record of the present cases, and the submissions raised by the learned advocates of both the sides, this Court is of the clear opinion that the representations of the detenus have not been properly considered and no explanation is rendered as to why same were considered late. Therefore, in absence of explanation about delay in consideration of representations and also the improper and hurried consideration, the impugned orders of detention resulting into continued deprivation of right of the detenus, cannot be said to be justified, legal and valid.

#. In view of the above, all the three detention orders suffer from the vice of delay in consideration and improper examination and consideration, resulting into negation of valuable statutory right, and therefore, the continued detention of the detenus cannot be said to be just and reasonable, requiring interference of this Court in exercise of Article 226 of the Constitution for quashing and setting aide the same.

#. In the result, all the three petitions succeed and the same are allowed. The impugned orders of detention are hereby quashed and set aside. The detenus are ordered to be set at liberty forthwith, if they are not required in any other case. Rule is made absolute. No order as to costs.

(J.N.Bhatt, Acting C.J.)

(sunil)